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No. 61

In the Supreme Court of the United States

OCTOBER TERM, 1928

E. FRANKLIN BREWSTER, PETITIONER

v.

BERT P. GAGE, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENT

U.S. GOVERNMENT PRINTING OFFICE: 1929

In the Supreme Court of the United States

OCTOBER TERM, 1928

No. 807

E. FRANKLIN BREWSTER, PETITIONER

v.

BERT P. GAGE, COLLECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR RESPONDENT

The Collector does not oppose the petition.

This case involves the construction of Section 202 (a) of the Revenue Act of 1921, c. 136, 42 Stat. 227, 229, which provides in part as follows:

> That the basis for ascertaining the gain derived or loss sustained from a sale or other disposition of property, real, personal, or mixed, acquired after February 28, 1913, shall be the cost of such property; except that—
>
> * * * * *
>
> (3) In the case of such property, acquired by bequest, devise, or inheritance, the basis

> shall be the fair market price or value of such property at the time of such acquisition.
> * * *

The particular question is, when is the time of "acquisition"?

In the present case the United States Circuit Court of Appeals for the Second Circuit, reversing the United States District Court for the Western District of New York and refusing to follow two decisions of the Board of Tax Appeals and a decision of the Court of Claims, has held that the property involved was acquired at the time of the death of the testator rather than on the date of the order of distribution.

Cases presenting similar questions are now pending before the Board of Tax Appeals involving many millions of dollars and there are, in addition, numerous cases under consideration by the Bureau of Internal Revenue which have not yet reached the Board of Tax Appeals, while new cases are constantly arising.

The question is an important one and should be settled by this Court. For that reason the Government concurs in the petition for certiorari.

Respectfully submitted.

/ WILLIAM D. MITCHELL,
Attorney General.

APRIL, 1929.

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